

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: NEW ENGLAND COMPOUNDING
PHARMACY, INC. PRODUCTS LIABILITY
LITIGATION

This Document Relates to:
All Cases

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) MDL No. 1:13-md-2419-RWZ
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CHAPTER 11 TRUSTEE’S REPORT
REGARDING STATUS OF PRESERVATION ISSUES

Paul D. Moore, the chapter 11 trustee (the “Trustee”) of New England Compounding Pharmacy, Inc. d/b/a New England Compounding Center (“NECC”), files this Status Report in connection with his Notice Regarding Further Relief from Preservation Order [Doc. No. 1174] (the “Notice”) and his compliance with this Court’s August 12, 2014 Order [Doc. No. 1332]. Specifically, this Court ordered, among other things, that “the Trustee shall allow access to the facility for three days during the month of August to any counsel who wish to inspect the place and any items remaining there. If any party wants to continue to maintain the status quo of the facility and its contents, the Trustee shall accommodate such party or parties upon payment by such party or parties of the costs of maintaining the facility and its contents. If no party wishes to keep any piece of machinery or other item, the Trustee may dispose of it.” Order at 4.

In accordance with this Court’s August 12 Order, the Trustee provided access to the NECC facility to interested parties on August 20-22, 2014, as indicated in his Notice Regarding Access to Inspect NECC Facility in Accordance with this Court’s August 12, 2014 Order [Doc. No. 1344]. The Trustee received only three requests for inspection, all of which he accommodated. Since then, the Trustee has not received any request to maintain the status quo of the facility and its contents and to pay the associated costs as required by this Court’s Order.

Rather, one party sent a letter dated August 25, 2014, indicating that it may explore whether other parties might be interested in sharing the costs of maintaining the facility and its contents and requesting the amount of such costs. The Trustee provided that party with the estimated monthly costs of maintenance on September 10, 2014, but has not received any further response.

Lastly, the August 12 Order also directed that “Mr. [Frederick] Fern, Special Counsel to the Trustee . . . shall provide a general (as opposed to document-by-document) index of the items he holds.” Order at 4. Consistent with this Court’s instructions, Mr. Fern and his colleagues at Harris Beach have prepared indices of the documents they hold and will make the indices available to parties to this MDL pursuant to the Third Amended Protective Order of Confidentiality [Doc. No. 814] by depositing the indices into U.S. Legal, the electronic document repository maintained by the Plaintiffs’ Steering Committee. Harris Beach will also provide indices to this Court in camera if the Court so desires.

Accordingly, in light of the Trustee’s compliance with this Court’s Order and the lack of any request to maintain the status quo of the NECC premises and offer to pay the associated costs, the Trustee respectfully requests that he be permitted to sell or otherwise dispose of the remaining NECC property, and to vacate, in whole or in part, the NECC premises, as originally contemplated in the Notice.

Dated: September 18, 2014

Respectfully submitted,

DUANE MORRIS LLP

/s/ Michael R. Gottfried

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Certificate of Service

I, Michael R. Gottfried, hereby certify that on September 18, 2014, I caused a copy of the foregoing document, which was filed using this Court's ECF system, to be served electronically upon those parties registered to receive ECF service and by first class mail upon:

Darrel Cummings, DC# 088532
South Bay Correctional Facility
P.O. Box 7171
South Bay, FL 33493

/s/ Michael R. Gottfried
Michael R. Gottfried